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In the Supreme Court of the United States

OCTOBER TERM, 1963

BRUCE M. SIGMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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The judgment of the court of appeals was entered on July 24, 1963 (Pet. App. 8). A petition for rehearing was denied on September 11, 1963 (Pet. App. 9-10). On October 9, 1963, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to and including October 18, 1963. The petition, which was not filed until October 19, 1963, is therefore out of time.[1]

[1] We have been advised by the Clerk of the Court, however, that the petition was received by the District of Columbia post office on the afternoon of October 18th. It was posted by airmail special delivery and might have been delivered to the Court on that day.

In any event, as appears from the opinion of the court of appeals, reported at 320 F. 2d 176, the petition presents no issue warranting review by this Court. The only issues raised are essentially questions of fact decided against petitioner in both the courts below.

STATEMENT

Petitioner was convicted in the Western District of Washington of perjury before a referee in bankruptcy and was sentenced to a $2000 fine and imprisonment for two years, of which all but four months was suspended (R. I, 2-3, 9, 24). An involuntary petition in bankruptcy had been filed against petitioner in May 1960 (R. II, 13-14). His schedules showed liabilities of over $300,000 and assets of over $200,000 but the assets were eventually liquidated for $95,000 (R. II, 16-20).

Petitioner testified before a referee in a proceeding under Section 21(a) of the Bankruptcy Act on July 18, 1961 (R. II, 24). He said that in December 1960, he had gone into the automobile business in Salem, Oregon, with Dean and David Vanek, under an arrangement whereby he received half of the profits in return for teaching them the business and that later the Vaneks bought out petitioner's interest in the business for approximately $12,000 (R. II, 47-49, 52-54). Petitioner was asked, "Now, aside from your services did you put anything into this business?" and replied, "No, sir" (R. II, 55).

At the trial the Vanek brothers and their father testified that the boys contributed $5,000 borrowed

from their father to go into business with petitioner and that petitioner was to match that sum (R. II, 135-137, 232-233, 237, 249-250). On October 11, 1960, petitioner gave to David Vanek $4,545 in cash,[1] which David deposited together with a check and other currency to open the business bank account (R. II, 255-259, 138-139, 227). Petitioner said that because of his bankruptcy he wanted to be a silent partner. Accordingly, the bank account, light, telephone and water bills, dealer's license, credit applications, lease and tax records reflected Dean and David Vanek as sole owners of the business (R. II, 146-150, 168-172, 263-264). The Vanek boys followed petitioner's instructions by telling others that petitioner had no money invested in the business (R. II, 148, 264-265).

In April 1961, the Vaneks bought out petitioner's interest in the business for approximately $12,000. This was computed on the basis of $5,000 for the return of petitioner's original investment plus 50% of the other assets (R. II, 151-154, 234-235, 265-267). Shortly thereafter petitioner told all three Vaneks that because of bankruptcy it should not be disclosed that he had invested in the business and that if anyone questioned them they were to say that he had contributed no funds (R. II, 154, 235-236, 270). Petitioner threatened Dean and David Vanek and their families with bodily harm if they should ever testify against him regarding this matter (R. II, 154-155, 270-271).

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[1] Petitioner told David Vanek that he gave him $4,545 instead of $5,000 since he had used the difference in paying cash for poles on the used-car lot (R. II, 259).

The manager of Valley Motor Company in Salem (R. II, 90), where petitioner and the Vanek boys had been employed for two months before they started the business, testified that he saw petitioner pay the rent for a house from a roll of bills containing fifty or one hundred dollar bills (R. II, 96-98). On one occasion, petitioner gave the manager a hundred dollar bill to make a purchase, saying that he did not want to be seen spending a hundred dollar bill (R. II, 125-126).

ARGUMENT

1. It is evident that petitioner's challenge to the sufficiency of the evidence is without merit. The "two witness" rule was adequately satisfied since all three Vaneks testified that petitioner contributed $5,000 to the business and held a half interest in it, in direct contradiction of petitioner's testimony both at the bankruptcy hearing and at the perjury trial that he had put nothing into the business other than his services in teaching the used-car business to the Vanek twins. *United States* v. *Letchos*, 316 F. 2d 481, 485 (C.A. 7), certiorari denied, No. 243, Oct. 14, 1963; *Laughters* v. *United States*, 155 F. 2d 29 (C.A. 6). There was also partial corroboration in Bland's testimony as to petitioner's possession of large amounts of cash prior to the initiation of the business venture with the Vaneks. The Vaneks explained that they signed certain documents indicating that they were the sole owners of the business pursuant to petitioner's request that his co-ownership should not be divulged. The records, therefore, did not necessarily im-

peach the testimony of the Vaneks. The question was one of credibility which the jury resolved against petitioner.

2. The claim that petitioner's testimony was not material is without substance. The fact that, shortly after the bankruptcy proceedings were instituted, petitioner had almost $5,000 in cash to invest in a business, was clearly a matter of interest to the trustee in bankruptcy as bearing on possible concealment of assets. Petitioner argues that the questions at issue were not pertinent because other questions asked by the referee indicated that he had records showing discrepancies between sales made and monies accounted for by petitioner (Pet. 16-18). The existence of such records refutes rather than supports petitioner's argument. It was obviously material for the referee to determine whether the discrepancies represented money unlawfully kept by petitioner for his own use.

Petitioner's suggestion that a narrower test of materiality should be applied to testimony before a referee in bankruptcy than to that before a court is without substance. Under Sections 1(9), 38(2), (6) and (7), and 41(a) of the Bankruptcy Act (Pet. App. 2-3) a bankruptcy referee has powers similar to those of a bankruptcy court. A referee is a judicial officer of the bankruptcy court and applies the same rules of evidence as a court. *Adair* v. *Bank of America Assn.*, 303 U.S. 350, 357-358; *Langham, Langston & Burnett* v. *Blanchard*, 246 F. 2d 529, 534 (C.A. 5).